DOCUMENT RESUME

ED 399 735 EC 305 066

AUTHOR	Schrag, Judy A.
TITLE	Mediation in Special Education: A Resource Manual for Mediators. Revised and Updated.
INSTITUTION	National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE	96
CONTRACT	HS92015001
NOTE	48p.; Prepared by Project FORUM.
PUB TYPE	Guides - Non-Classroom Use (055) -- Tests/Evaluation Instruments (160)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Arbitration; Compliance (Legal); *Conflict Resolution; Definitions; *Disabilities; Educational Practices; Elementary Secondary Education; *Guidelines; Parent Rights; *Parent School Relationship; Special Education; Student Rights
IDENTIFIERS	*Mediation Techniques; Mediators

ABSTRACT

This resource manual presents information on mediation practices in special education disagreements between the school and parents. The manual provides an overview of requirements in the Individuals with Disabilities Education Act (IDEA) and gives definitions for alternative dispute resolution processes, such as arbitration and litigation. A chart shows the differences between mediation, due process hearings, and litigation. The manual explains the benefits of mediation and the qualifications, skills, and abilities a mediator should possess. Information is provided on how to prepare for mediation and how to conduct the mediation. The different phases of the mediation are described. They include: (1) the introduction/opening statement (a sample is provided); (2) fact finding, with statements by each mediation party; (3) collaboration and discussion; (4) the caucus; and (5) reconvening the joint session. Finally, information on how to conclude the mediation is provided. Commonly asked questions about mediation are answered. Appendices include sample mediation agreements, sample evaluation forms, and rules of mediation. (Contains 15 references.) (CR)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 399 735

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☒ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Mediation in Special Education

A Resource Manual for Mediators

Revised and Updated by
Judy A. Schrag, Ed.D.

EC 305066

BEST COPY AVAILABLE

Acknowledgments

Project FORUM extends its sincere appreciation to the individuals listed below who reviewed and commented on an earlier draft of this document. Their efforts served to enrich the document's quality and accuracy. Our acknowledgment of these individuals does not necessarily indicate their endorsement of the final product.

Judy Harvey
Training Coordinator
Atlanta Justice Center
976 Edgewood Avenue, NE
Atlanta, GA 30307

Marshall Peter
Executive Director
Lane County Direction Service
3875 Kincaid Street
Eugene, OR 97405

Harold Spicknel
Director
Michigan Special Education Mediation Services
2500 Kerry Street, Suite 208
Lansing, MI 48912

Art Stewart, Mediator
Bureau of Special Education Appeals
Massachusetts Department of Education
350 Main Street
Malden, MA 02148

Table of Contents

Introduction 2

Overview of Mediation 5

Preparing for Mediation 8

Conducting the Mediation 10

Concluding the Mediation 16

Questions and Answers About Mediation 18

Resources 22

Appendix A—Sample Mediation Forms and Letters 23

Appendix B—Sample Mediation Agreements 29

Appendix C—Sample Evaluation Forms 32

Appendix D—Rules of Mediation 35

Appendix E—Communication in Mediation 36

Appendix F—Checklist of Activities 38

Introduction

SPECIAL EDUCATION DISAGREEMENTS

The Individuals With Disabilities Education Act (IDEA) requires education agencies to provide a free appropriate public education (FAPE) all eligible students with disabilities. In addition, the IDEA requires that children with disabilities and their parents have the right to due process and procedural safeguards in matters regarding the proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. In the implementation of IDEA, disagreements have arisen between parents and school personnel concerning procedural and/or programmatic decisions about the provision of services for children with disabilities. Mediation has proven to be effective as an alternative to formal due process hearings or litigation for settling such disputes. However, mediation cannot be used to deny or delay a due process hearing.

Many different types of special education issues related to the identification, evaluation, and placement of a student with a disability can be successfully mediated. Such issues may include:

- whether a student should be identified as having a disability, or the specific disability classification;
- whether a student is eligible to receive special education and related services;
- whether the programs and services designated for the student with a disability are appropriate;
- whether the designated type and amount of related services (e.g., speech/language, physical therapy) are appropriate; and
- whether the educational placement designated for the student is in the least restrictive setting.

OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Since the early 1970s, there has been general dissatisfaction with the formal judicial process for resolving disputes in special education because of its high cost, its adversarial nature, and its frequent inability to provide satisfying solutions. A range of non-judicial alternatives for resolving various kinds of disputes has emerged. These alternative dispute resolution procedures can be placed on a continuum ranging from informal approaches to the more formal due process and litigation approaches (Slaikeu, 1989; Schrag, 1996).

USE OF MEDIATION IN SPECIAL EDUCATION

Mediation is being used in several areas including business and commercial disputes, small claims courts, environmental concerns, public

Dispute Resolution Continuum

Negotiation/ Facilitation Ombuds Advocates	Mediation/ Conciliation	Mock/Mini Trial Pre-Hearing Conference	Arbitration	Med-Arb	Due Process	Litigation

Decision by the Parties
Informal
Low Cost
Limited Preparation
Private

Decisions by a Higher Authority
Formal
High Cost
Extensive Preparation
Public

policy conflicts, consumer disputes, international conflict, child custody disputes, and marital conflicts. Formal mediation systems in special education began in Massachusetts and Connecticut as early as 1975. Ahearn (1994) reported that 30 of the 50 states operate formal special education mediation systems. Of the remaining states that did not report mediation systems in place, two were in the process of developing formal mediation procedures. The remaining states without formal mediation have some form of informal or formal mediation procedures (e.g., informal pre-hearing settlement conferences, reliance on local district implementation, or other alternative dispute resolution procedures) (Ahearn, 1994).

LEGAL PROVISIONS

Mediation is not expressly provided for within the IDEA; however, it is mentioned in a notation under Reg. 300.506 12-USC 1415 b(2) which states that "mediation can lead to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights . . ."

In the current re-authorization IDEA, it is expected that Congress will amend the permanently authorized Part B of IDEA and require states to make mediation available for resolution of special education disputes or differences between parents and school personnel.

DEFINITIONS

This manual concentrates on mediation which is the most frequently used alternative dispute resolution (ADR) process that can result in decidedly different outcomes from those of due process hearings or litigation. Definitions of these ADR processes are given below.

Negotiation is a problem-solving dispute resolution process in which the parties voluntarily discuss their differences in an attempt to reach an agreement. All participants have a stake in the outcome of the dispute. Successful negotiation results in an agreement or an exchange of promises. Parties maintain control over the outcome of negotiation.

Facilitation describes a collaborative process in which a third party is responsible for managing group discussion so that the parties in conflict can focus on substantive issues and achieve their goals. A facilitator works with a group to establish an agenda, suggest and enforce ground rules, keep the discussion on track, and offer suggestions on how the group is working. An ombudsperson can serve as a fact finder or facilitator. In addition, facilitation and negotiation can be done by advocates or other third parties such as case managers and parent liaisons.

Mediation/Conciliation is a dispute resolution process in which a mediator, two mediators, or a panel of mediators assist the disputing parties. The mediator(s) acts as an impartial enabler to help the disputants identify and discuss issues of mutual concern, explore solutions, and develop mutually-acceptable agreements. In mediation, the disputing parties usually meet face-to-face. The mediator does not have the power to impose a binding decision or outcome on the parties.

Arbitration is a dispute resolution process in which a third party is empowered to recommend a settlement on two or more disputing parties. In an arbitration hearing, each side has an opportunity to present the facts and merits of the case to the arbitrator. Following these case presentations, the arbitrator issues an opinion. Because due process rights of the parties cannot be jeopardized, arbitration opinions in special education disputes may not be binding (e.g., due process rights may not be delayed or denied). Arbitration also must be voluntary to parents.

Med-Arb is a melding of mediation and arbitration in which disputing parties authorize a neutral third party to mediate and to change roles if they reach an impasse. To break an impasse, the disputants authorize the third party to make a decision on the issue in question which is non-binding (e.g., due process rights may not be

If you understand what you believe in, decision-making becomes a lot easier.

—James Burke

delayed or denied). Med-Arb must also be voluntary to parents. Persons knowledgeable about mediation, arbitration, and due process, as well as a content expert(s) specific to the issue in dispute, can facilitate the process.

Mock or Mini-Trials include abbreviated presentations of evidence to one or more expert neutral facilitator(s) and others with decision-making authority. Following the presentation of evidence and a questioning period, the decision-makers and facilitator will meet for confidential settlement discussions.

Pre-Hearing Conferences are informal meetings held for the purpose of clarifying the issues in dispute, insuring that communication among the parties is clear, and insuring that all parties understand their procedural rights.

A **Due Process Hearing** is a formal process in which both parties to a dispute can present evidence to a hearing officer, who makes a decision on the issue for the parties involved after reviewing all evidence presented. Decisions by the hearing officer are written and are binding unless appealed through proper educational or legal channels.

Litigation is a formal process in which persons with a dispute presents their case to a judge, and sometimes also a jury, in a courtroom setting. Typically, both parties are represented by lawyers in court. The decision is made by a judge, or judge and jury, is given in written form, and is binding unless appealed to a higher court.

HOW TO USE THIS RESOURCE MANUAL

In 1982, NASDSE developed a *Resource Manual for Mediators*. This new resource manual updates and extends the earlier mediation resource. The resource manual has been designed to:

- Provide mediators, and those training mediators, with the necessary background and general information about mediation within the broader context of alternative dispute resolution;
- Provide specific information about the steps or phases of special education mediation; and
- Provide further guidance related to the major issues within special education mediation; rules of mediation to share with the parties in disagreement; tips about effective communication; sample forms, letters, agreements, and evaluation strategies; and simulations for mediator training.

Mediation is an effective alternative dispute resolution strategy to resolve special education disagreements.

This resource manual provides helpful information about the mediation process.

Overview of Mediation

DESCRIPTION OF MEDIATION

Mediation is a dispute resolution process in which an impartial third party, the mediator, assists the disputing parties in reaching mutually satisfactory solutions. It is a process in which both parties agree to meet and discuss their concerns in order to negotiate an agreement. Mediation is informal, but it has structure with a beginning, a middle, and an end. The process stresses communication and creative problem-solving.

Mediation often results in a written agreement, formulated and agreed upon by all parties. The written agreement should be incorporated into the student's IEP. Successful implementation of the agreement can negate the need for a due process hearing or litigation. Mediation conferences that do not result in written agreement may still be considered successful if they promote a clearer understanding of the issues in disagreement, clarify points of agreement as well as areas of continued disagreement, promote and encourage an atmosphere of rational discussion and mutual respect for the other party's opinions and beliefs, and repair damaged relationships (Nevada Department of Education, 1990).

BENEFITS OF MEDIATION

Mediation eliminates or greatly reduces many of the negative results associated with a due process hearing or litigation. Because of its informal nature, it is less inhibiting than a due process hearing. It also greatly reduces the need for legal assistance by either party. A mediation conference can usually be held within two weeks of a request thus saving time. Because of its informality, much less time is spent in preparation than for a due process hearing or litigation. Mediation typically results in an agreement in less than eight hours, while a due process hearing can take up to a week or longer. Mediation provides a private setting in which emotional and sensitive issues can be discussed, whereas due process and court hearings are more public and involve more people. Mediation promotes communication, mutual respect, and identification of common ground, while due process hearings and litigation usually result in polarization. There is also more direct parent involvement in the mediation process and ultimate agreements reached. Additional benefits are described in the chart on the next page comparing the key features of mediation, due process hearings, and litigation (NASDSE 1982).

QUALIFICATIONS, SKILLS, AND ABILITIES OF A MEDIATOR

There are varying opinions regarding the extent to which a mediator must have a background in special education. At a minimum, however, a mediator must have a thorough knowledge of federal legislation related to special education including the Individuals With Disabilities Education Act, Section 504 of the Rehabilitation Act of 1974, and the Americans With Disabilities Act. A working knowledge of applicable state laws, case law, and regulations is also necessary. A mediator must also have a thorough knowledge of the mediation process as well as other alternative dispute resolution procedures. A mediator should be familiar with issues of class, gender, and culture, and be able to convey respect and appreciation for diversity. A mediator should understand the nature of special education programs and services in order to be credible and acceptable to the parties and in order to understand the scope of the issues, responsibilities, and obligations of the parties. Many individuals feel that mediation knowledge and experience is essential.

In addition to this above-mentioned knowledge, a mediator should possess the following skills and abilities.

The real voyage of discovery consists not in seeking new landscapes but in having new eyes.

—Marcel Proust

MEDIATION	DUE PROCESS HEARINGS	LITIGATION
PROCESS —**Informal** Confidential Minimal number of witnesses and documents Attorneys need not be present Negotiation Agreement Lessening of hostility —**Decision** made by both parties Written agreement usually on the same day of session —Due process hearing may not be delayed or denied because of the inability to reach a mediation agreement.	**PROCESS** —**Quasi-formal** May be confidential High number of documents and witnesses Attorneys generally present Evidence presented for decision-making by the hearing officer —Written **decision** by hearing officer sent by mail to all parties after hearing; decision binding on all parties, unless appealed —**Appealable** to State Agency (if 2-tier system) and Civil Court	**PROCESS** —**Formal** Court of Law Not confidential Witnesses involved Attorneys present Judge and possibly jury present Considerable amount of evidence presented —**Decision** made by judge or jury —**Appealable** to highest court having jurisdiction over the subject matter and person
ROLE OF MEDIATOR Impartial facilitator Focus of areas of agreement, compromise Not to judge Not to impose his/her will, decision, values Agent of reality	**ROLE OF HEARING OFFICER** Impartial decision maker is a "judge" of situation	**ROLE OF JUDGE/JURY** A winner and loser is decided
COST Mediators either voluntary or paid $150–$400 per mediation conference based on state experience	**COST** Based on state experience, approx. $8,000; could be up to $25,000 or higher depending on the complexity of the case	**COST** Considerably more that either Mediation or a Due Process Hearing
TIME Can be set within days after request at convenience of both parties, but must not interfere with due process time limits	**TIME** Must be completed (decision rendered) within 45 days of request unless the hearing officer agrees to extension, or state regulations require a different time period, but not to exceed 45 days.	**TIME** May take many months to have final court hearing
AVAILABILITY Voluntary for parents Voluntary for school systems	**AVAILABILITY** Mandatory upon request of either parents or school system	**AVAILABILITY** Mandatory when summoned by Court

Personal Qualities—Ability To:

- Express oneself in a cordial, open manner
- Project a concern for justice and fairness
- Exhibit integrity
- Suppress one's own ego needs
- Tolerate frustration
- Control hostilities
- Foster trust
- Consider needs and feelings of others
- Perform under pressure
- Encourage parties to identify and bargain from interests, not positions
- Promote reality
- Stress the positive

Cognitive Abilities—Ability To:

- Conceptualize basis of disagreements
- Respond constructively to new information
- Act as a catalyst to formulate new options
- Help parties to resist simplistic and superficial solutions
- Help parties to assess problems and sequentially reach solutions
- Help parties to develop alternative courses of action based on logical assumptions and factual information
- Synthesize information quickly

Communication Skills—Ability To:

- Be highly attentive
- Ask questions which clarify
- Summarize and paraphrase points of disagreeing parties
- Display genuine empathy
- Extract facts from oral communication
- Perceive messages beyond words
- Balance the playing field between disputants who have disparate communication skills
- Encourage parties to re-examine their assumptions, interests, and goals
- Promote fresh thought through re-framing

USE OF MEDIATION

Mediation is voluntary and may only be used when both parties to the dispute or disagreement agree to it. It is good to emphasize that mediation can never be used as a required preliminary step before any other administrative or legal recourse. Federal interpretations and legal opinion have held that compelling parents to participate in mediation prior to administrative or judicial proceedings violates the rights of the child and family.

Mediation should be used to resolve disagreements as soon as it has been determined that resolution of the issues of concern is not possible. If a due process hearing has been requested, mediation should occur at least ten days prior to a hearing. There is a trend across the country to utilize more informal methods of dispute resolution such as the use of ombudspersons or advocates to resolve differences quickly and to prevent differences from occurring. Use of the structured process of mediation is consistent with this trend particularly if mediation is encouraged and utilized at the earliest possible point when disagreements appear to be unresolvable, rather than to wait until a due process hearing has been requested.

TYPES OF MEDIATION

The single mediator approach is utilized by the majority of states; however, a number of states have implemented co-mediation as an alternative or in addition to a single mediator. Panel or team mediation is also being used. Many feel that the single mediator approach is more cost-effective and efficient. Others feel that the use of co-mediators allows a more experienced mediator to work with one that is less experienced. Co-mediators can learn new techniques from each other and balance their skills. The use of a panel or team mediation approach can more fully represent the diverse characteristics of the disputants such as gender, ethnic group, and parent or school affiliation. There also may be a better chance for the participant to feel a sense of trust with at least one of two mediators or one of the panel mediators. It is important to note, however, that there is no single mediation approach that works best. All three mediation alternatives have proven effective and often depend on unique circumstances of each case.

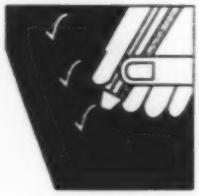
BEST COPY AVAILABLE

Preparing for Mediation

States vary in the extent to which the state education agency or contracted entity is involved in making the logistical arrangements for the mediation conference. In some states, the administrative function [including appointment of the mediator(s)] is carried out by the state education agency. In other states, the administration of mediation is contracted out to a third party; e.g., private organization or individual. A local education agency might also make logistical arrangements [e.g., assignment of mediator(s), identification of mediation site, etc.] directly without assistance from the state education agency or third party. If a co- or panel mediation approach is used, a lead mediator should be designated as the contact person for logistical preparations for the mediation conference.

Whether or not the mediator(s) are directly involved in making the logistical arrangement for the mediation conference, it is important for the mediator to be certain that arrangements have been confirmed in writing to the local and/or state education agency including the following:

- The date mediation was agreed to by both parties;
- The name and phone number of contact person for clerical assistance, supplies, conference room, and payment, if applicable;
- The name and telephone number of the family and the educational agency representative involved in the dispute; and
- Whether the family needs an interpreter because of either language or hearing difficulties or if any other special assistance is required.



CONTACTING THE EDUCATIONAL AGENCY AND THE PARENTS OR GUARDIANS

The mediator (or lead mediator if a co- or panel mediation approach is being used) or mediation administration agent should contact the agency representative and the family within two days after being appointed as mediator. Initial contacts are important because they set the stage for all further communication. The person making contact should be pleasant, professional, understanding, and impartial in speaking with both sides.

The following information should be conveyed to the local education agency representative and the family during the initial contact:

- Name and telephone number of the mediator (or lead mediator if a co- or panel mediation model is used);
- Role of the mediator;
- Structure and purpose of the mediation conference;
- Who may attend the conference, including persons deemed necessary for assistance (but to be kept to a minimum in order to maintain informality and open communication);
- Time required for the conference; and
- Location for the mediation conference.

The mediator or mediation administration agent should determine from the agency representative the preferred date(s), within the time frame, the time(s), and location(s) for the conference. The family should confirm convenient date(s), time(s) and locations(s) suggested by the agency, and whether an interpreter is needed either because of language differences or deafness. Both parties should be asked to indicate if any additional person(s) will be accompanying them to the mediation as well as the names and positions to such person(s). If the parents cannot be reached by telephone, the mediator should send a letter (by certified mail, return receipt requested) which includes all of the information that would have been covered by telephone. It is important for the mediator (or lead mediator) or to request clarification at the time of appointment as to the extent to which the administering agent or the mediator will be

responsible for the logistical arrangements of the mediation conference.

A follow-up letter should be sent to both parties confirming the logistical arrangements, re-stating the purpose of mediation, role of the mediator, time required for the mediation conference, location, agenda showing the phases of the mediation conference, rules of mediation (see Appendix D), and questions and answers to the common concerns of mediation (see Questions and Answers About Mediation). In addition, the letter should list all persons who will be attending the mediation.

If a due process hearing has been requested prior to agreeing to mediation, it is important for the mediator or the mediation administration agent to facilitate a request or notice to the local or state education agency that the party has agreed to mediate and that the prior request for a due process hearing should not be acted upon at this time.

(See Appendix A for a sample request for mediation, a sample letter of mediator appointment, a sample mediator's pre-conference telephone contact form, contact forms for use in writing follow-up letters to the parents and school districts, sample request for postponement of a due process hearing, and a sample request for withdrawal of a due process hearing.)

Conducting the Mediation

Following is a step-by-step guide for the mediation conference that can be used by the mediator(s). Careful attention to each step will help facilitate a successful mediation.

PREPARATION AND PHYSICAL ARRANGEMENT OF THE ROOM

The conference should be held at a location convenient to both parties. Although a public school facility may be the most convenient location, a neutral location, such as a library or conference room, is preferable. It is the responsibility of the mediator or the mediation administration to confirm the location with both parties and to see that the room is arranged satisfactorily. Specifically:

- Select a room in a quiet area which can be completely closed off for privacy. It should be well-ventilated and well-lit with enough space so that people are comfortable.
- Determine number of chairs needed for the number of participants and other persons accompanying each party.
- Decide on positioning of participants. The seating of the mediating parties and the mediator is important to communicate equality of the parties. The following seating arrangement is suggested: mediator at the head of the table with the family on one side and local school representative on the other. In this way, the mediator takes a facilitating stance throughout the process, and the parties are able to speak directly to each other. It is important that the mediator be seen as having a guiding and facilitating role throughout the mediation conference.
- Determine smoking or non-smoking rules during the mediation conference.

MEDIATION PHASE 1 – INTRODUCTION/OPENING STATEMENT

The mediation conference should be opened at the appointed time. In Phase 1 of a mediation conference, an opening statement is made by the mediator setting the tone and structure for the entire mediation conference. The following basic information must be included in the opening statement:

- Identification of all parties present, giving all names with consistent titles (i.e., Miss, Mrs. Ms., Mr., Dr. or first name);
- Reiteration of the purpose for the mediation conference;
- Review of the mediator's (or mediators' if co- or panel mediation is being used) role;
- Review of mediation rules (see Appendix D);
- Setting an informal tone of the conference;
- Reviewing the flow/phases of the mediation conference; and
- Providing information about what the agreement to be reached is and what it means.

Spontaneity is important for credibility. It is important not to memorize a speech. Commit to memory only the areas to be covered. The more familiar the mediator is with the process, the less memorization will be needed. The order in which each area is covered after introductions is not usually important. Be brief, clear, and concise.

A sample opening statement is given below to indicate the flow of thoughts and possible tone.

Mediator's Opening Statement (Sample)

(Do not read this aloud or memorize for use during session)

1. My name is _____ (or our names are _____ if a co- or panel mediation is being used). I am (we are) the mediator(s) appointed for this conference concerned with the mutual interest in establishing an appropriate program for (name of student). A student's interests are best served when family and school personnel reach decisions cooperatively. Thank you for coming with a commitment to resolve the differences that you have.

2. You are M_____, the complainant (who filed the concern) and you are M_____, the respondent (who replies to the concern). Let's check, have there been any changes in addresses or telephone numbers? (If so, correct the file.)

3. My (our) qualifications (training or professional background) are: _____. I am (We are) a trained mediator(s) and experienced in cases very much like the problem that brings you together today.

4. I (We) have no prior acquaintance or relationship with any parties present and no knowledge of the matter before us except for the referral information provided. In other words, I am (we are) impartial. (If there has been a prior relationship, state that you have, but that you will not be prejudiced by this fact.)

5. I (We) do not represent either party, but am (are) here to help you reach an agreement and achieve a settlement of this matter. I (We) have no authority to impose a decision or dictate the terms of a settlement. If this dispute should later result in a due process hearing, I (we) will not willingly testify there for either party.

6. Your purpose for participating in this mediation session is to resolve the problem and to reach an agreement that will guide future interactions between you. My (Our) role as mediator(s) is to assist you with the problem-solving process. Should a resolution be reached, I (we) will furnish written copies of a written agreement before we leave today.

7. Mediation does not violate due process rights. Mediation will in no way delay or otherwise interfere with your rights to a due process hearing. If you do not reach agreement at this mediation conference, the option of a due process hearing is still available.

8. The mediation session today is confidential to any outside party (note any exceptions that are required by state law such as for child abuse or threats of violence). It is in your best interests to protect the confidentiality of this session after we are finished today. (If either party has brought an advocate, attorney, or other person(s) with them, stress the importance of protecting confidentiality of any matter discussed during the course of the mediation conference.)

9. Our procedures call for informal discussion. Notes may be taken. (If either of the parties have brought a person(s) with them, clarify that this person(s) may observe only and participate, as appropriate, during the individual meetings held later in the session or in the combined discussions as agreed upon by both parties.) There may be points during the mediation conference in which both parties may agree to have a brief statement of clarification or additional information from an accompanying party.

10. I would like to ask both parties at this time to contribute to a correct portrait of the student, (name of student), so that we can focus on solutions that can meet his/her needs. Each of you will be given an opportunity to provide an uninterrupted opening statement. Because it is important that your concerns are clearly understood, you can take as much time as needed in your opening statements. M _____, as the complainant, will go first with an opening statement. Please be as clear as possible about your understanding of the problem and about strengths and needs of the student, (name of student).

11. Next, M _____, the respondent, you will provide an uninterrupted statement again. After you have both finished with your opening statements, we will have a brief informal discussion to share understandings, ask for additional information, and clarify any points. As needed, each of you may make additional uninterrupted statements following by group discussion. Other persons who are included in the mediation session will also be allowed an uninterrupted statement following the opening statement of each party in order to add further information about the student, (name of student), and his/her needs.

12. After we have completed our group discussion, we will enter into the next phase of this mediation conference. I (We) will probably meet with each of you so that I (we) can clarify any issues, gather more information about the concern, and discuss your preferences or options for resolution. This private meeting is

Unless we change our direction, we are likely to end up where we are headed.

—Old Chinese Proverb

called a caucus. No significance should be attached to an unequal amount of time spent in caucusing with one or the other party.

13. After the private meetings or caucuses, we will meet again as a group to continue discussion and clarification of the issues and to identify possible ways to resolve the problem or concern. I (We) will ask questions and indicate areas of agreement. If needed, we can always have another private caucus.

14. Based on the progress that you have had at this point, we can proceed to the next phase of mediation, the development of an agreement for future action. I will assist the parties in drafting an agreement in language acceptable to both parties. You will be asked to consider and agree on each point in the agreement to be certain that it represents your intent accurately and fairly. When you both have agreed to the resolution steps, you will sign the written agreement and I (we) will also sign as a witness to the agreement. Each of us will get a signed copy before we leave this session.

15. If there is a need for a legal review of the agreement, we can agree to have that completed, before the agreement is signed. You can each have your attorney review the agreement if you feel that it is necessary. If this is necessary, this review can take place here, if applicable, or we can agree upon a timeline for review and a process of making any revisions/getting the final agreement to both parties.

16. After the written agreement is received and signed, both of you are responsible for its implementation and for ongoing communication. The components of the written agreement that are usually a part of the IEP will become part of (name of student)'s IEP.

17. Let me emphasize again the importance of confidentiality that we all need to respect.

18. It is expected that this mediation conference will be completed in a single session of approximately four hours. We will not rush and can finish in less or more time, as appropriate.

19. Again, I (we) want to thank and compliment you for agreeing to mediation to resolve your differences. Do either of you have any questions? Do you understand the steps or process that we will carry out today? (If there is a need, stop to clarify or answer any questions.)

20. We are now ready to listen to M_____'s description of the student, (name of student), and his/her needs.

MEDIATION PHASE 2—FACT FINDING: STATEMENTS BY EACH MEDIATION PARTY

In Phase 2 of the mediation conference, both parties are entitled to an uninterrupted statement. The statements of the parties should focus on the strengths and needs of the student as well as possible ways to meet these needs and resolve issues and differences. The listening participant writes notes, questions, or possible solutions. At the end of each uninterrupted statement, the mediator may ask questions, seek clarification, or summarize the points made.

MEDIATION PHASE 3—COLLABORATION: DISCUSSION

Following an uninterrupted statement by each party, there is an opportunity for the mediator to ask questions and clarifications and for discussion across the parties. If agreed upon by both parties, any person(s) attending the mediation conference can be given an opportunity for a brief statement to provide clarification or additional information. Both sides may air their concerns in the presence of the opposing party. It is important to get as many issues out on the table as possible in the joint session to make certain that nothing gets overlooked.

Considerations for the discussion phase are as follows.

Presence of Advocates or Other Persons Accompanying Either Party

If consistent with state law or policy, the parties may bring additional persons to the mediation session who can shed light on the student's needs and programs available. The mediator and both parties should agree to the limits of participation by additional persons in advance of the mediation.

Presence of Attorneys

Sometimes this issue is determined by state law or policy. In the absence of such provisions, parties are entitled to be represented by an attorney if they wish. If attorneys are parties in the mediation, they should not allowed to disrupt the mediation process. It is important that the parties speak for themselves rather than through an attorney. Attorneys should not conduct courtroom-style questioning. The mediator should remind attorneys that this is a mediation conference, not a formal hearing, and that a formal hearing will be available to the parties at a later date if mediation fails. As with other persons attending the mediation conference, attorneys are usually excluded except during their own statement or opportunities to ask questions and seek clarifications. The mediator and the parties should agree to the parameters for participation by attorneys in advance of the mediation.

Supporting Information or Evidence

Supporting information or evidence presented by one side may help persuade the other side toward its position. The more credible the information, the more impact it will have.

The mediator is a neutral facilitator, not a judge and should use the material presented to help re-examine assumptions and conclusions.

The impact of supporting information facilitates settlement in two ways:

- By hearing the other side's information, each party may become convinced of some of the merits of the other side's assertions, which may lead to offers of settlement.
- The mediator may ask the parties to consider their best alternative for a settlement (e.g., "Mrs. Jones, what do you suppose would happen if this dispute went to a hearing? What would the hearing officer think about Johnny's placement based on these test scores?" "Does this information provide us a fuller picture of Johnny's needs and/or a possible solution?").

MEDIATION PHASE 4—THE CAUCUS

After both sides have presented their case and clarifying questions have been asked to help the parties' and the mediator's understanding of the issues in agreement, caucusing may occur. If caucusing is not used, the mediator can explore options for agreement with the parties together.

Caucusing, or meeting with each party individually, allows for a change of pace during the mediation process. If well planned and directed, the caucus can significantly accelerate movement toward agreement. At this time, the mediator can determine what both parties want and what alternatives they are willing to consider. If a co- or panel mediation option is being used, a mediator can meet with each of the parties at the same time.

The mediator should consider the following questions when deciding whether or not a caucus is necessary and what should be accomplished:

- **Why?** Because you need to talk with each party individually:
  - — To clarify details and personal data in greater privacy;
  - — To move beyond an impasse;
  - — To build trust;
  - — To reduce tension, at times to save face;
  - — To give people time to think alone, to cool off, to reflect;
  - — To allow mediator time to absorb and analyze information;
  - — To learn what both parties really want and what they are willing to give; and
  - — To explore initial options.
- **When?** As needed (not automatically), after statements have been made by both parties Caucuses may be used more than once or not at all.
- **How?** If a single mediator is used, ask one party to leave and assure them that you will meet individually with them also. If a co- or panel mediation option is used, one mediator can meet with one party, while another mediator meets with the other party.
- **Where?** Separate rooms should be used, particularly if sensitive information is being

We see things, not the way they are, we see things the way we are.

—Talmud

shared or if there is strong emotion being displayed by one or both mediation parties.

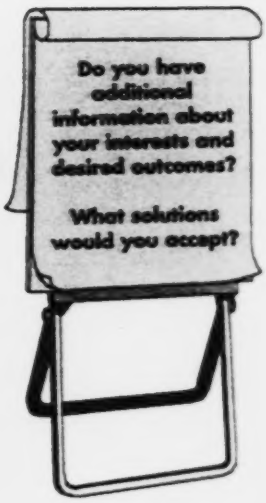
Prior to Caucus

Think about how to organize information most effectively by considering these questions:

- What do I know? (e.g., what are the real issues and what is extraneous?)
- What do I need to know? (identify gaps and discrepancies)
- How will I get what I need to know? (e.g., ask direct questions, requesting clarifications, probing)

During the Caucus

The mediator meets separately with each party to ascertain what they want and what alternatives they are willing to consider. It should always be made clear at the beginning of each caucus that whatever is said is confidential. During each caucus, the mediator must take notes detailing points in the student's educational program of which each party approves and points which they dispute. The main points discussed should be summarized. In addition, this summary should be read to each party to make sure that it is accurate.



The mediator should keep in mind these key points during the caucus:

- Remember the original goals, but be flexible in pursuing new ideas and allowing for creative problem-solving;
- Keep the responsibility for problem-solving on the parties; resist efforts to thrust this responsibility on the mediator;
- Emphasize strengths to both parties. The caucus often allows for positive feelings where a joint session may not;
- Maintain the delicate balance between building trust and continuing to communicate mediator impartiality;
- Remember that the caucus is not a counseling session or a time for the mediator to impose his/her preferences or views onto either party; and
- Have a clear understanding with both parties regarding what information they do *not* want mentioned during the joint session.

Recess

After meeting individually with both parties, the mediator may find it helpful to call for a short break to allow time to sort through the information presented and to identify points of agreement and possible options or solutions. A recess can also be creatively used as a "cooling off" period if there has been a barrage of information and emotions exchanged, or a time for the parties to communicate separately. However, experience has shown that a recess is not always necessary or necessarily helpful to the mediation process.

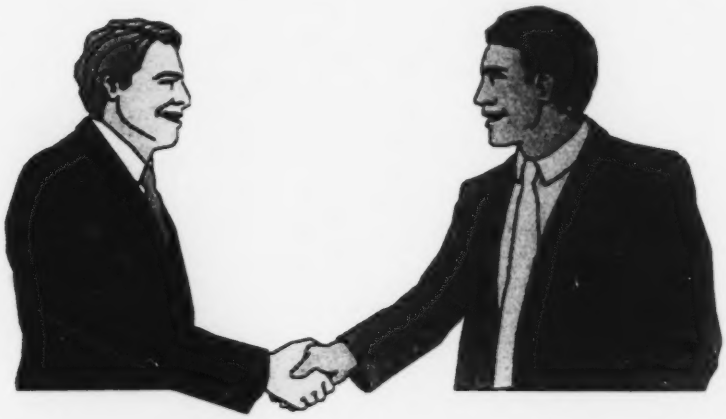
Possible Options to Explore

- A three-to-six month trial period under the present placement with a specified number of meetings to discuss the student's progress.
- General education classroom placement for part of the day, specialized instruction in a special class or with a special teacher for the balance of the day.
- Periodic visits by the family to observe the student's behavior at school.
- Home visits by the teacher to give the family a better opportunity to show the student's home behavior.
- Revision of the portion of the IEP in dispute.
- Non-public school placement for the student if it seems appropriate, but with designation of a specific date as well as types of tests and observations to be used in re-evaluating the placement. Clarify basic reason for placement (i.e., behavior of John is too erratic in placement in the special education program at X School because he has been unpredictably violent on several occasions).
- Training to be provided for the classroom teacher and specific support to the teacher by a special education teacher or other specialist.

- Availability of a volunteer group to provide transportation, therapy assistance, etc., if the school is willing, but does not have available funds.
- A date to conduct an IEP meeting for the purpose of reviewing the status of implementation of steps agreed upon during the mediation conference that are to be included in the IEP.

MEDIATION PHASE 5—RECONVENING THE JOINT SESSION

The re-opening of the joint session after the caucuses with both parties is critical. The mediator(s) must think carefully about the best approach to take, given the information, proposals, and feelings/preferences which have been shared, and must be discriminating as to what, if any, information learned in caucus will be discussed in joint sessions. Such information can facilitate or jeopardize the session. Judgment, timing, and respect for privacy are crucial factors. The mediator(s) should identify perceptions of the areas of agreement between the parties and possible options. Body language and verbal reactions should be constantly monitored. If one or both parties should retreat from agreement stated in caucus, this misconception should be discussed with respect for confidentiality, listening for compromise, and, if necessary, re-caucusing. It may be necessary to re-caucus several times.



Concluding the Mediation

Following the joint session, the mediator will conclude the session (mediation Phase 6). There are three possible outcomes:

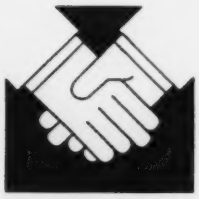
- An agreement has been reached over the disputed issues;
- Both parties are firm on part or all of their positions, and further time spent in mediation would be unprofitable; or
- Both parties agree that it would be useful to reconvene after considering/gathering additional information.

The first outcome (agreement over issues) requires a written agreement signed by both parties. The second outcome (impasse) requires the mediator to remind both parties of their right to a due process hearing or the availability of some other form of dispute resolution.

AGREEMENT WRITING

If the parties have reached agreement, the mediator should prepare a written statement (see sample agreement forms in Appendix B). The written agreement must communicate what the parties want it to say without substituting the mediator's ideas for theirs. It is important to draft the agreement in the presence of all parties so that details previously discussed can be worked out to everyone's satisfaction. The agreement should state clearly who is agreeing to what, where, when, and how. An effective mediation agreement should (Arizona Department of Education, 1993):

- be specific;
- be clear about deadlines;
- be balanced;
- be positive;
- be realistic;
- be clear and simple; and
- be signed by everyone present.



A clearly written agreement in neutral language will be most likely to fulfill its purpose of influencing future conduct and thus avoiding the necessity for further mediation, hearing, and appeal. If problems should recur after mediation, a well-written agreement will help clarify issues and serve as evidence of the parties' intentions at the time of mediation.

A suggested heading and opening paragraph for agreements are shown in Appendix B. Following are some specific suggestions for writing the agreement:

- Avoid legalese, educational jargon, and overly formal language; make it as simple and understandable as possible.
- Do not refer to the parties as "complainant" or "respondent" in the agreement.
- Use the names the parties have used throughout the mediation conference.
- Use a series of short paragraphs.
- Write out dates, times, and other specifics.
- Include important details: How many hours per day are spent in the general education class? Which hours? Which subjects? How many students without disabilities are present during those times? How many students with disabilities are present? How many teachers are present? Names? Classroom assistants?
- Be as specific as possible in wording agreements about the future behavior of both parties.
- Be neutral in the language and format used. In many cases, the agreement reached can be a guide for an amended or revised Individualized Educational Program (IEP).
- Remember that the agreement belongs to the parties. Use their word choice when it is clear and can be mutually understood. Check the wording of each item with each of the parties.
- Attempt to balance the agreement as much as possible.
- Alternate the group concessions where possible so that it appears that each side "wins" something and the agreement is as fair and balanced as possible (e.g., family permission

for testing; conditions for testing; right to review results of tests, records, and reports).

- Focus on future conduct and avoid language placing blame for past problems or dissatisfaction. For example: "Beginning Monday, April 3, 1996, the school will provide thirty minutes of day of individualized instruction with the learning disabilities specialist for Jamie Smith," rather than "The school admits that Jamie Smith should have been scheduled for individualized instruction from the beginning of the school year." Never allow a party to agree to admitting guilt or blame. Never allow a party to give up his/her right to legal advice.
- Consider what the impact of the wording of the agreement will be if the parties read it a month after the mediation conference. Will all the clauses be clear to the parties and to anyone else to whom the agreement is shown?
- Schedule an IEP meeting to incorporate those parts of the mediation agreement that are applicable to the student's IEP.

After the agreement has been written, the mediator should read it aloud and ask for any clarifications or changes. Whether or not there are facilities for immediate typing of the agreement, at least a handwritten agreement should be signed. Copies of the agreement shall be distributed to each party at the end of the mediation conference. Mediators (particularly if a co- or panel mediation option is used) might find it helpful to use a laptop computer to generate the final mediation agreement. A portable printer could generate copies of the agreement right on the spot. Other arrangements should have been made ahead of time, as needed, for printing of copies of the agreement for each party.

MEDIATION EVALUATION

Although mediation evaluation is optional, it can provide valuable information regarding the mediation process and the outcomes of mediation. A mediation evaluation questionnaire should be given to the parties with an addressed and stamped envelope (see Appendix C for examples). A brief discussion of the purpose and value of this evaluation feedback should be given, and the parties should be urged to complete the questionnaire and mail within the next week. Let the parties know that their feedback will help to improve the mediation process throughout the school district and the state. Information gathered through questionnaire feedback will include information about the mediation process as well as the perceived success of the mediation. The state and local education agency representative, responsible for mediation, should also gather data regarding the implementation of mediation agreement (e.g., Was the agreement implemented? Did the agreement lead to improved services for the student?).

Questions and Answers About Mediation

What is mediation?

Mediation is an optional process through which family and the educational agency representatives with differing viewpoints can informally consider and/or develop alternatives to the disputed issue(s). The mediation conference is conducted informally to:

- Provide open communication and discussion of alternatives;
- Focus on the student's best interest; and
- Attempt to resolve the differences and formulate an alternative which is adequate in scope, appropriate for the student's individual needs, and acceptable to both parties.

Who is responsible for mediation?

The State Education Agency (SEA) has overall responsibility for the administration of mediation in each state directly or through a contracted source (e.g., another state agency, regional office, private source, etc.). A mediation administrator may be designated within the SEA or through a contracted entity. Mediation can also be administered and managed at the local level using procedures agreed-upon by the SEA.

What is a mediator?

A mediator is an impartial third party who does not render a decision, but who helps the family and the educational agency representative consider and/or develop alternatives to the dispute.

How are mediators selected?

A mediator, co-mediators, or a panel of mediators are usually selected on a rotation basis by the mediation administrator from a pool of trained mediators. Assignment will depend on availability. Individuals selected to serve as mediators will have successfully completed a training program designed for special education mediators. Mediators will be selected on the basis of the following qualifications:

- Neutrality (both perceived and real);
- Knowledge of the mediation process;
- Knowledge of special education and the needs of students with disabilities; and
- Effective personal and communication skills.

Is mediation legally required?

No. Mediation is not currently required by federal law, but it is anticipated that Congress will make a change within the re-authorization of the IDEA to require that all states offer mediation. In addition, mediation is encouraged within current IDEA federal regulations. Also, many state special education regulations recognize the value of mediation as an optional approach. Mediation, however, cannot be used to deny or delay an impartial due process hearing.

What are the benefits of mediation?

The use of mediation has the following benefits over a formal due process hearing:

- Mediation can be less antagonistic.
- Mediation is less time consuming.
- Mediation is less costly for both parties.
- Mediation uses the strengths of both participants to solve problems.
- Through mediation, objectivity and negotiation can assist the parties in developing and implementing acceptable alternatives.
- A negotiated agreement is conducive to future positive relations.

Who may request an informal mediation conference?

A mediation conference may be requested by:

- The student's parents;
- Other persons having primary care and custody of the student;
- The student (if over 18 years of age); or

- The local educational agency representative.

When can mediation be requested?

Mediation can be requested when it is believed that an impasse has been reached. It is encouraged that parties seek mediation as early as possible, before concerns become emotional and positions become hardened. Mediation can occur prior to or concurrent with a due process hearing request. Mediation cannot be used to deny or delay an impartial due process hearing once it has been requested.

How soon is a mediation conference scheduled after receipt of a mediation request?

A mediation conference should be scheduled as soon as possible after receiving a request for a mediation conference, preferably within two weeks.

May participants bring other persons to the mediation session?

State law or policy can determine if parents or guardians and the local agency representative may bring other people, including attorneys, with them in the mediation conference. However, to keep the session informal and manageable, the number of such additional persons should be kept to a minimum. Either party must notify the mediator in advance of the meeting about the participation of any individual(s) attending the mediation conference other than the parties involved. Advocates, attorneys, and/or other persons attending mediation sessions must know that mediation is not an adversarial procedure, but a problem-solving process in which both parties want to reach an agreement.

What is the educational status of the student involved in mediation?

During mediation, unless the agency and the family of the student agree otherwise, the student involved in the dispute will remain in his/her present educational placement or the program in which he/she is enrolled at the time of the request. If the student is not enrolled in any educational program, he/she may, with the consent of the parents be placed in a public school program until a solution has been reached. Similar provisions are followed during the pendency of a due process hearing.

How long should a mediation conference take?

Many mediation sessions have been successfully completed in half a day. The mediator will determine whether progress is being made or whether additional time is necessary for resolution.

What are the steps or phases to a mediation conference?

A mediation conference has the following six phases:

1. *Introduction/Opening Statement* by the mediator (and other mediators in a co- or panel mediation option);

2. *Discovering Issues* in which each party has an uninterrupted statement of the issue(s) in disagreement, additional information about the issue(s), the strengths and needs of the student, options to resolve the concerns, and each party's preferences;

3. *Collaboration* in which the mediator helps the participants discuss their feelings and concerns, and identify and discuss areas of agreement as well as possible solutions and options;

4. *Caucusing* in which the mediator(s) meets individually with each participant or party to further clarify their concerns and possible solutions;

5. *Re-convening* the joint session; and

6. *Concluding* the mediation with resolution in which the parties draft a written agreement or reach an impasse.

Note: If caucusing is not used, phases 4 and 5 are replaced with a group meeting to clarify concerns and identify possible solutions.

BEST COPY AVAILABLE

What is the role of the mediator(s) during the mediation conference?

The overall responsibility of the mediator(s) is (are) to help the parties or participants clarify the issues in disagreement and to find mutually-satisfactory solutions. The following terms are descriptive of the mediator's role (Melamed, 1995):

- *Convener*—by assisting in contacting the parties to arrange for the conference.
- *Educator*—by informing the parties about the mediation process and other conflict resolution procedures including due process hearings.
- *Communicator/Facilitator*—by using strategies to be certain that each party is fully heard in the mediation.
- *Translator*—by rephrasing or reframing communication so that the parties are understood and received.
- *Questioner and Clarifier*—by probing issues and confirming understandings.
- *Process Advisor*—by suggesting procedures for making progress in mediation discussions including caucus meetings and consultation with others attending the conference or with outside legal counsel.
- *Catalyst*—by offering options for consideration, stimulating new perspectives, and offering reference points for consideration.

What should the outcome of the mediation conference be?

If the mediation conference is successful, the outcome will be a written agreement. The mediator assists in developing alternatives to help the parties resolve their differences. If an agreement is reached, a written document is prepared by the mediator(s) and signed by both parties with the mediator(s) as a witness. It is encouraged that the mediation agreement be written in the format of a proposed IEP modification for the student for those components that are normally part of an IEP.

What if an agreement is not reached?

If the parties are unable to come to an agreement at the mediation conference, the mediator(s) should advise them of their right to request, in writing, a due process hearing or to participate in another alternative dispute resolution strategy.

May a postponement of the mediation conference be requested?

Yes, but if the postponement is requested by either party, the mediator has the discretion to determine whether or not such a request is reasonable. The mediator may postpone the conference to a later, mutually agreed upon date. Both parties, however, must agree to the postponement. A delay of more than five days is discouraged unless it is part of an initial agreement that involves a trial period for modification in the student's program with a time frame for deciding on a more permanent agreement.

Who should receive a copy of the agreement reached through mediation?

Both the family and the educational agency representative should receive a copy of the written agreement signed by both parties.

What are the qualifications of a mediator?

A mediator should:

- Be sufficiently free of other obligations to complete the required duties and responsibilities;
- Have effective interpersonal and communication skills;
- Be pleasant, professional, understanding, and impartial;
- Have no personal or professional interest that would conflict with his/her objectivity;
- Have no prior involvement in any decisions regarding the student's identification, evaluation, or educational placement; and
- Have received formal training in the mediation process, including knowledge of IDEA and other applicable federal and state laws.

What are the responsibilities of the mediator?

The mediator should:

- Make the conference arrangements unless they are made by an administration agent;
- Confirm the conference time and place with all parties;
- Conduct/facilitate the conference;
- Write the agreement reached through mediation;
- Assure that copies of the agreement are given to both parties; and
- Inform parties of their options in the event agreement is not reached.

Can a mediator require an independent evaluation of the student?

No. A mediator can suggest to the family and educational agency representative that an additional evaluation is needed. The agency may be required to bear the cost of the student's evaluation.

How does the mediator handle objections to information being given by either party?

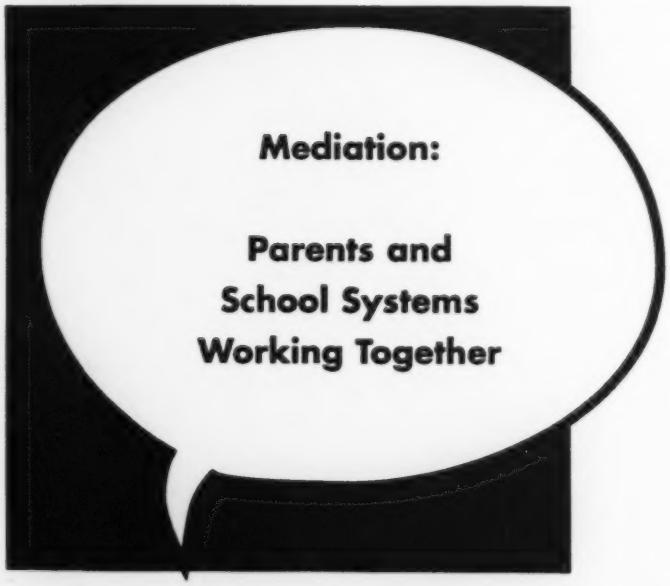
The mediator(s) should remind the party objecting that this is an informal conference and that open communication is a goal of the session. The mediator(s) should allow the parties to express themselves fully. The mediator(s) is (are) there to clarify issues and to seek areas of agreement and resolution.

What are the costs of mediation?

Under the federal standard of free and appropriate public education, special education mediation must be at no cost to the family. The costs of mediation should be covered by the state education agency or shared between the state and local education or other public agency.

How can we be certain that mediation agreements will be implemented?

Those mediation agreements that are normally part of an IEP are generally incorporated into the IEP for the student. However, even if the mediation contracts are kept separately from the IEP, they serve as a contract between the parties, and implementation depends on the commitment and good will of both parties.



Resources

Ahearn, E. (1994). *Mediation and Due Process Procedures in Special Education: An Analysis of State Policies*. Alexandria, VA: National Association of State Directors of Special Education.

Arizona Department of Education. (1993). *Special Education Negotiation and Mediation Skills Training Manual*. (rev. ed.). Phoenix, Arizona: Author.

Budoff, M.; & Orenstein, A. (n.d.). *Mediation: An Informal Conflict Resolving Procedure for Special Education Disputes*. (Final Report, Grant No. G008300006). Cambridge, Massachusetts: Research Institute for Educational Problems.

Engiles, A.; Quash-Mah, S.B.; Peter, M.; & Todis, B. (1995). *Utilization of Dispute Resolution Panels for Special Education Disagreements*. (Grant No. H023M20010). Eugene, Oregon: Lane County Direction Service.

Gallant, C.B. (1982). *Mediation in Special Education Disputes*. Silver Spring, Maryland: National Association of Social Workers.

Lane County Direction Service. (1995). *Conciliator Training Manual*. (Grant No. H023M20010-94). Eugene, Oregon: Author.

Justice Center of Atlanta. (1995). *Dispute Resolution in Education*. Atlanta, GA: Author.

Maryland Office of Administrative Hearings. (n.d.). *Special Education Mediation: Procedures and Guidelines*. Lutherville, Maryland: Author.

Melamed, J.C. (1995). *Mediation Training Materials*. Eugene, Oregon: Bureau of Indian Affairs.

Nevada Department of Education. (1990). *Nevada Special Education Mediation System*. (Contract Number OEC 300-83-0185). Carson City, Nevada: Author.

Paulson, S.; & Copenhaver, J. (n.d.). *Mediation Process for Dispute Resolution under Special Education*. (Contract No. H028A30009). Helena, Montana: Montana Office of Public Instruction.

Schrag, J.A. (1996). *Mediation and Other Alternative Dispute Resolution Procedures in Special Education*. Alexandria, Virginia: Project FORUM, National Association of State Directors of Special Education.

Sykes, D. (1989). *National Survey on Special Education Mediation Systems*. Alexandria, Virginia: National Association of State Directors of Special Education.

Slaikeu, K.A. (1989, October). Designing dispute resolution systems in the health care industry. *Negotiation Journal: In Practice Dispute Systems Design: A Special Section*, 395-400.

Whelan, R.J. (1995). *Mediation in Special Education*. Prairie Village, Kansas: Author.

Appendix A—Sample Mediation Forms and Letters

REQUEST FOR MEDIATION

Date of Application: _____

Applicant: _____

Address: _____

Phone Number(s): _____

Education Agency: _____

If an Education Agency is the applicant, designate contact person and phone number:

Name: _____

Phone Number: _____

Student for whom mediation is requested:

Name: _____

Birthdate: _____

Has a due process hearing been requested? ❍ yes ❍ no

Has a hearing been scheduled? ❍ yes ❍ no If yes, please state the date: _____

Please indicate preferred dates and times you are available for a mediation session: (Mediation will be scheduled within 30 days of a request.)

Please Mail To: Mediation Administrator
(Address)
(Phone Number)

SAMPLE AGREEMENT TO MEDIATE

We the undersigned, have been fully informed of the mediation process and agree to abide by the procedures and guidelines governing the process. We understand the following:

1. The mediators are specially-trained impartial third parties whose role is to assist us in making mutually determined decisions regarding the appropriate special education program and services for (name of student);
2. The mediators are not serving as legal representatives, counselors, or therapists;
3. The mediators will not make decisions regarding the special education program or services;
4. The mediators cannot be called upon as witnesses or consultants to any other administrative, legal, or educational process;
5. Mediation is confidential, and the only written record will be the agreement that we jointly develop and agree upon in the mediation process; and
6. Participation in a mediation session does not delay or waive the parties' right to proceed with a due process hearing.

Family member(s): _____

Education Agency Representative: _____

Mediator(s): _____

Date: _____

SAMPLE LETTER OF APPOINTMENT TO THE LOCAL EDUCATION AGENCY REPRESENTATIVE BY STATE EDUCATION AGENCY OR CONTRACTED THIRD PARTY

Dear _____:

This agency has appointed (name of mediator) as a mediator in the dispute regarding the special education program of (name of student).

(Name of mediator) will be contacting you shortly to arrange for a mutually agreeable time and place for the mediation conference.

Prior to the beginning of the mediation conference, the mediator will require that both parties sign a waiver for mediation. The waiver protects the confidentiality of the process allowing the parties to make unguarded comments and to explore offers without implying commitment.

Enclosed you will find a copy of the rules under which the mediation will take place. (Name of mediator) will be able to more fully explain any portion of the mediation process and/or the rules when he/she contacts you.

If you have any questions or concerns, please feel free to contact _____ at _____.

Sincerely,

(Mediation Coordinator)

Enclosure

SAMPLE FOLLOW-UP LETTER TO EDUCATION AGENCY REPRESENTATIVE

Dear _____:

This letter will summarize our telephone conversation of (date) regarding the arrangements for the mediation conference in the matter of (name of student).

We agreed to hold the mediation conference at (location) on (date), (time). The family has agreed to this time and place.

As I stated, the mediation conference is an informal process. You may bring with you any persons you feel are necessary for assistance, but we ask you to keep these to a minimum to maintain informality and open communication.

I will be contacting the family to describe the mediation process and to determine whether any accommodations or support will be needed such as an interpreter, etc.

Thank you for your cooperation. If you need to contact me in reference to the mediation, you may reach me at (telephone number) from (hours) to _____ on any weekday. I will not be able to discuss the facts of the case with you, prior to the mediation conference. However, I can answer any questions regarding procedural matters relating to the arrangements for the mediation conference.

Sincerely,

(Mediator)

SAMPLE FOLLOW-UP LETTER TO FAMILY

Dear _____:

This letter will summarize our telephone conversation of (date) regarding the arrangements for the mediation conference in the matter of (name of student).

We agreed to hold the mediation conference at (location) on (date), (time). The family has agreed to this time and place.

As I stated, the mediation conference is an informal process. You may bring with you any persons you feel are necessary for assistance, but we ask you to keep these to a minimum (one or two) to maintain informality and open communication.

I will be contacting you to describe the mediation process and to determine whether you will need any accommodations or support such as an interpreter, etc.

Thank you for your cooperation. If you need to contact me in reference to the mediation, you may reach me at (telephone number) from (hours) to_____ on any weekday. I will not be able to discuss the facts of the case with you prior to the mediation conference. However, I can answer any questions regarding procedural matters relating to the arrangements for the mediation conference.

Sincerely,

(Mediator)

MEDIATOR'S PRE-CONFERENCE TELEPHONE CONTACT TO LOCAL EDUCATION AGENCY

Student's name: _____

Family member name: _____

Phone number: _____

School District: _____

School Representative: _____

Phone number: _____

Date: _____

Spoke with: _____

Purpose of Contact

The purpose of this contact is two-fold:

1. *to establish a date and place for the mediation conference, and*

2. *to obtain information needed for the conference.*

You MUST NOT discuss any information pertaining to the case.

Opening Statements

This is (your name). I have been appointed as mediator in the matter concerning (name of student).

I am calling for two reasons. First, I want to set a mutually-satisfactory date and place for the mediation conference. Second, I would like to ask a few questions in order to obtain the information I need to make the arrangements for the conference. Do you have a few minutes to answer my questions? *(If not, establish another time to call.)* What would be the most convenient time and date for the conference? *(Set an alternative date and time, and cross check these with the family.)* Do you have any recommendation for a location for the mediation conference? *(Set a meeting location and cross check with the family.)*

As you know, mediation is an informal process in which you and the family will have an opportunity to discuss your differences with my assistance as an impartial third party, and to see if we can formulate an agreeable solution. You have the right to bring other people to the conference if you feel they may help you, but the number of persons should be kept to a minimum (one or two) to keep our discussions informal and manageable. I will need the names and positions of anyone who will participate in the mediation. Can you provide this information today? If not my telephone number is (telephone number). Please call me within the next day or two with the names and positions.

In order for me to more fully understand the context of the disagreement, it is necessary for me to review the education record of (name of student). Can I arrange a time to do this? *(Set a date and time to review the record.)*

Closing Statement

I will send you a letter today summarizing our discussion, with a copy of it to the family. Thank you for your cooperation.

MEDIATOR'S PRE-CONFERENCE TELEPHONE CONTACT TO FAMILY

Student's name: _____

Family member name: _____

Phone number(s): _____

School District: _____

School Representative: _____

Phone Number(s): _____

Date: _____

Spoke with: _____

Purpose of Contact

The purpose of this contact is two-fold:

1. *to establish a date and place for the mediation conference, and*

2. *to obtain information needed for the conference.*

You MUST NOT discuss any information pertaining to the case.

Opening Statements

This is (your name). I have been appointed as mediator in the matter concerning (name of student). I am calling for two reasons. First, I want to set a mutually satisfactory date and place for a mediation conference. Second, I would like to ask a few questions to obtain the information I need to make the arrangements for the conference. Do you have a few minutes to answer my questions? *(If not establish another time to call.)* Would it be convenient for you to hold the conference on (date and time given by agency representative)? *(If not, see if alternative date and time are preferable.)* The conference will be held at (location given by agency representative). Does the location create any problems for you as a location for the conference? Is English the primary language used in your home? If not, will you need an interpreter or translator? Will you be needing any other support or accommodation?

As you know, mediation is an informal process in which you and the educational agency will have an opportunity to discuss your differences with my assistance as an impartial third party, and to see if we can formulate an agreeable solution. You have the right to bring other people to the conference if you feel that they may help you, but the number of persons should be kept to a minimum (one or two) to keep our discussion informal and manageable. I will need the names and positions of anyone who will participate in the mediation. Can you provide this information today? If not my telephone number is (telephone number). Please call me within the next day or two with the names and positions.

In order for me to more fully understand the context of the disagreement, it is necessary for me to review the education record of (name of student). Do I have your permission to do this?

Closing Statement

I will send you a letter today summarizing our discussion with a copy to the public agency. Thank you for your cooperation.

SAMPLE REQUEST FOR POSTPONEMENT OF DUE PROCESS HEARING

TO: (Hearing Officer)

The parties below agree to the postponement of the due process hearing requested, on behalf of (student's name) on (date of due process request). The postponement request is effective from (date) and will continue for a period up to _____ days or until the mediation conference has been completed, whichever is sooner.

Mediator: _____

Family member: _____

Family member: _____

Date: _____

Approval by Hearing Officer: _____

Date: _____

SAMPLE REQUEST FOR WITHDRAWAL OF DUE PROCESS HEARING

Because of an agreement reached through mediation between (school district or agency) and the family of (name of student), we withdraw our request for a due process hearing at this time. We have been informed of our rights to request a due process hearing in the future.

Signature of Petitioner: _____

Title: _____

Date: _____

Appendix B—Sample Mediation Agreements

SAMPLE AGREEMENT 1

Date: _____

Case Number: _____

In the Matter of Mediation between: _____

Complainant: _____

Respondent: _____

Agreement

We, the undersigned, having participated in a mediation session on (date) and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

The revision to the Individualized Education Program (IEP) for Jennifer Jones which follows was developed to be used beginning at 8:30 on the morning of Monday, March l, 1996.

This IEP will continue in effect through Friday, March 25, 1996, at 3:30 in the afternoon, at which time John Jones and Mary Jones (the parents of Jennifer Jones) will meet with Nancy Smith and Alice Adams (teachers), Ann Brown (director of special education), and John Johnson (superintendent) for the purpose of re-evaluating the IEP.

It is the expectation of the parties that this revised IEP for Jennifer will prove satisfactory to all parties and that it will remain in effect through the end of the school year (May 20, 1996). If modification of the IEP is proposed at the March 25, 1996 meeting of the parties but such modification is not agreeable to all parties, a second mediation conference will be scheduled at the earliest possible date.

The attached IEP is hereby adopted under the above conditions for Jennifer Jones.

Mediator/Witness: _____

Parent(s): _____

_____

School Official(s): _____

_____

SAMPLE AGREEMENT 2

Date: _____

Case Number: _____

In the Matter of Mediation between: _____

Complainant: _____

Respondent: _____

Agreement

We, the undersigned, having participated in a mediation session (date) and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

1. A speech therapy program will be provided by the Town Board of Education for Jennifer Jones to be carried out as detailed in the following paragraphs.

2. Linda Smith, a speech-language pathologist certified by the State Teacher Certification Services and employed by the Town Board of Education, will visit the Central School on Monday, November 1996, between 9:00 and 11:30 in the morning to administer a comprehensive speech-language evaluation to Jennifer Jones. Tests of auditory discrimination and articulation, as well as an examination of the oral peripheral mechanism will be administered. Other speech-language tests may be administered by Ms. Smith as needed to assess the speech-language problem comprehensively.

3. From the results of the above-described tests, a program of speech therapy will be designed for Jennifer Jones. Ms. Smith will write detailed lesson plans for this program, which she will explain and give to Virginia Brown, a full-time licensed communication aide.

4. Ms. Brown will conduct the program of speech therapy under the direct supervision of Ms. Smith with Jennifer Jones each Monday and Thursday from 11:00 to 11:30 a.m. beginning Monday, November 17, 1996, and continuing through the school year or until the objectives of the speech therapy program are met.

5. Ms. Brown will report by telephone to Ms. Smith on a weekly basis each Thursday afternoon regarding the progress of Jennifer Jones. At this conference, Ms. Smith will make suggestions to Ms. Brown regarding the therapy. Following this weekly Thursday telephone conference, Ms. Smith will make lesson plans for the next week to be sent to Ms. Brown at the Central School through the inter-school delivery system, to be received each Friday. Ms. Smith will be the individual responsible for planning, managing, and evaluating Jennifer's speech therapy program.

6. Ms. Smith will be responsible for all communication with teachers, family, and administrators regarding Jennifer's speech therapy program. Ms. Smith will administer a comprehensive speech-language evaluation at the end of the school year and/or whenever needed during the school year. Ms. Smith will be a member of the IEP team and Special Education Placement Committee and have input into the development of Jennifer Jones' speech therapy program. Ms. Smith will provide direct instruction (speech-language therapy) to Jennifer a minimum of once per month or more often if Ms. Smith feels that it is necessary. Ms. Smith will observe Ms. Brown as she is working with Jennifer a minimum of twice per month.

7. The Superintendent will appoint a certified teacher to be responsible for the safety of Ms. Brown and Jennifer Jones while they are working together in the school.

Mediator/Witness: _____

Family Member(s): _____

School Official(s): _____

SAMPLE AGREEMENT 3

Name of Student: _____

Date of Mediation: _____

School District: _____

Parties:

Family Member: _____

School District/Agency Representative: _____

Other Participants (please include relationship to student):

_____

_____

Terms of Mediation Agreement (use additional pages if necessary):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Family Member(s): _____

School District/Agency Representative: _____

Mediator's Signature: _____

Appendix C—Sample Evaluation Forms

FAMILY EVALUATION FORM

(To be given at the end of the mediation with a return envelope for reply)

The purpose of this evaluation is to improve mediation services. Information that you provide to us will be maintained in a confidential manner.

1. Family Member: _____

Address: _____

Telephone: _____

2. Date of the mediation conference: _____

Location: _____

3. Briefly describe the issue(s) mediated: _____

4. How did you find out about mediation? _____

5. What made you decide to try mediation? _____

6. Had you requested a due process hearing prior to the mediation conference? ❍ yes ❍ no

7. What was the most positive aspect of the mediation conference? _____

_____

The most negative? _____

8. How would you rate the mediator(s)? ❍ poor ❍ average ❍ good ❍ outstanding

9. How long (in hours) was the mediation conference? _____

10. How would you have improved the mediation conference? _____

11. Did you reach an agreement at the mediation conference? ❍ yes ❍ no

If so, how was the mediator helpful in assisting up in reaching an agreement? _____

12. Do you feel that the mediator sufficiently explained the mediation process? ❍ yes ❍ no

13. Do you feel that the mediation process will improve communication with the school? ❍ yes ❍ no

14. Do you have confidence that the mediation agreement will be carried out? ❍ yes ❍ no ❍ NA

15. Would you recommend the process to other individuals involved in special education disagreements? ❍ yes ❍ no

16. Would you use mediation again if you had the opportunity to do so? ❍ yes ❍ no

17. Other suggestions, recommendations, or comments (use back of form if necessary).

_____

SCHOOL DISTRICT EVALUATION FORM

(To be given at the end of the mediation with a return envelope for reply)

The purpose of this evaluation is to improve mediation services. Information that you provide to us will be maintained in a confidential manner.

1. Name: _____

Address: _____

Telephone: _____

2. Date of the mediation conference: _____

Location: _____

3. Name of family member(s) involved: _____

4. Briefly describe the issue(s) mediated: _____

5. How did you find out about mediation? _____

6. What made you decide to try mediation? _____

7. Had you requested a due process hearing prior to the mediation conference? ❍ yes ❍ no

8. What was the most positive aspect of the mediation conference? _____

_____

The most negative? _____

9. How would you rate the mediator(s)? ❍ poor ❍ average ❍ good ❍ outstanding

10. How long (in hours) was the mediation conference? _____

11. How would you have improved the mediation conference? _____

12. Did you reach an agreement at the mediation conference? ❍ yes ❍ no

If so, how was the mediator helpful in assisting up in reaching an agreement? _____

13. Do you feel that the mediator sufficiently explained the mediation process? ❍ yes ❍ no

14. Do you feel that the mediation process will improve communication with the school? ❍ yes ❍ no

15. Do you have confidence that the mediation agreement will be carried out? ❍ yes ❍ no ❍ NA

16. Would you recommend the process to other individuals involved in special education disagreements?

❍ yes ❍ no

17. Would you use mediation again if you had the opportunity to do so? ❍ yes ❍ no

18. Other suggestions, recommendations, or comments (use back of form if necessary).

_____

MEDIATOR EVALUATION FORM

(To be given at the end of the mediation with a return envelope for reply. Please attache a copy of the agreement that was reached.)

The purpose of this evaluation is to improve mediation services. Information that you provide to us will be maintained in a confidential manner.

1. Name: _____

Address: _____

Telephone: _____

2. Date of the mediation conference: _____

Location: _____

3. How would you rate the success of the mediation conference?

❍ unsuccessful ❍ somewhat successful ❍ successful ❍ very successful

4. What was the most positive aspect of the mediation conference? _____

_____

5. What was the most negative aspect of the mediation conference? _____

6. How would you have improved the mediation conference? _____

7. What was the most difficult aspect of conducting this mediation conference? _____

8. How long (in hours) was the mediation conference? _____

9. How many people participated in the mediation conference in addition to the mediator? _____

List name and position: _____

10. How much time did you spend preparing for the session? _____

11. If an agreement was reached, what do you think was the successful strategies used and/or dynamics that occurred to facilitate this resolution? _____

12. If an agreement was not reached, what do you think were the major obstacles or barriers to reaching a resolution? _____

13. Is there any indication that a due process hearing will be requested? (Briefly explain) _____

14. Approximately how many hours was spent in addition to the mediation conference (phone calls, other preparation? _____

15. Would you be willing to facilitate other medication sessions? ❍ yes ❍ no

16. What types of follow-up training would be helpful to you as a mediator? _____

17. Do you have any specific recommendations for enhancing the effectiveness of mediation conferences or the special education mediation process as implemented within our state? _____

18. Additional comments (use back of form if necessary).

_____

BEST COPY AVAILABLE

Appendix D—Rules of Mediation

The following is a summary of pertinent rules of mediation. These rules should be shared with the parties in disagreement.

1. The mediator is an impartial third party.
2. The mediator has no authority to compel any action by either party.
3. Mediation participants for both parties must include persons who have the authority to act on behalf of the student and local district or agency.
4. Mediation requires the full participation and commitment of both parties and can only begin or continue when parties agree.
5. The mediation conference is not recorded by any means. The only record that is kept of the mediation conference is the mediation agreement (either hand written or generated by a laptop computer) which includes a listing of participants and the date(s) and location(s) of the mediation session(s) and a summary of the outcome. A record of the mediation discussions will not be maintained.
6. Efforts to mediate will not be admissible as evidence at a due process hearing except for the purpose of noting that the mediation occurred and the terms of any agreement(s) that were reached as a result of the mediation.
7. The mediator shall terminate the mediation at any point that, in the opinion of the mediator or either party to the mediation, no resolution of the disagreement(s) is forthcoming.
8. The number of participants for each party shall generally be limited to two or three persons.
9. A reasonable time should be set from the time of initiation to completion of mediation(e.g., fourteen or twenty-one calendar days). This time could be extended by mutual agreement of all parties.
10. The mediator will chair all mediation conferences and assure that they are convened in a timely fashion, according to an orderly process, and with due regard to the rights and responsibilities of all parties to the mediation.
11. The content of the mediation conference is confidential and shall not be shared with outside parties.
12. The mediation will be present and future oriented; past problems will not be the focus of the mediation conference.
13. The mediation will be conducted with respect (e.g., name calling or interrupting will not occur).
14. A copy of the final agreement will become part of the student's school records.
15. Both parties will show good faith and commitment to implementing the final agreement.

Appendix E—Communication in Mediation

PURPOSE

The mediator(s) must: know what the purpose is and know should be accomplished.

1. *Set the Tone*—The manner in which one carries oneself and relates to the people involved conveys the seriousness/importance of what is happening and an intent to be an effective facilitator.
2. *Explain Your Role*—The mediator is there as an impartial third party to facilitate communication and to help people reach a mutually-satisfactory agreement.
3. *Identify the Ground Rules*—Explain the process, including specific procedures, what is expected from the parties, and the limitations of mediation as a process.
4. *Develop a Relationship*—Work on building trust with all parties and making them comfortable, establishing your impartiality and credibility early.
5. *Manage Information*—After hearing all the facts and interests in a case, the mediator must be selective in choosing those issues which are included in the mediation process.
6. *Manage Feelings*—Allow for whatever expression of feelings is comfortable for all parties, but not let feelings become "center stage."
7. *Problem-Solve/Negotiate*—The mediator's primary purpose is to help people reach an agreement, so efforts and energy should be focused ultimately on reaching resolution through mutual problem-solving throughout the process.
8. *Direct the Flow of the Mediation Process*—Throughout the session, the mediator must make many decisions regarding when to give more time to a particular topic/person or move on in order to monitor the communication between the parties involved and keep it "in balance."

OBSERVATION

Observing how communication flows may indicate where the "power" or influence lies and how the persons involved are contending with that power. This may be vital information for the mediator.

It is critical to understand the specific "context" of communication.

- *Information/facts*—messages that relate directly to the description of reality (an event, person, test)—Objective.
- *Feelings/Emotion/Values*—messages that relate to the perception and judging of reality—Subjective.

A mediator must have to deal with both information and feelings; however, they will rarely be stated separately. More often, they will be mixed up together with feeling obscuring or distorting facts and facts hiding feelings.

Therefore, it is critical to listen very carefully to what people are saying—both the obvious and the subtle. This "listening with a third ear" can help the mediation process immensely because it will enable the mediator(s) to help the parties involved gain a different perspective and see their positions in new ways (and, hopefully, move toward an agreement).

COMMUNICATION TECHNIQUES

Techniques for Receiving Messages (input)

Active Listening—Concentrate all of your energy on what a person is saying both in terms of information and feelings:

- ORGANIZE what is heard and identify inconsistencies, areas of conflict, common interest, values.
- FOCUS on the essential issues and try to get a feel for how substantial they are, and what the priorities are; and
- DISCARD extraneous or irrelevant information to keep on track.

Observe Non-verbal Behavior—how a person sits, eye contact, gestures, facial expressions—all are indicators of what he/she is thinking and feeling.

Techniques for Sending Messages (output)

Parroting—Repeat the person's words in order to let him/her know that you are listening and encourage further sharing.

Paraphrasing—Summarize the essence of what a person says in order to clarify the issues and suggest a constructive approach.

Flip Sides—Respond to the unstated positive behind the negative statement.

Reflecting Feeling—Discern what emotion the speaker is experiencing and verbalize it in order to build trust and rapport.

The Bottom Line—Draw a conclusion based on what has been implied by the speaker.

Identify Strengths—State the positive elements of what has happened. Example: "You have all come here to work on a solution . . ."

Agent of Reality—Establish consequences, confront inconsistencies and unrealistic outlooks.

Simplicity—Reduce professional jargon to understandable points, keep detail at a manageable level.

Probe—Perfect the use of direct and indirect and open-ended questions to obtain the information you need.

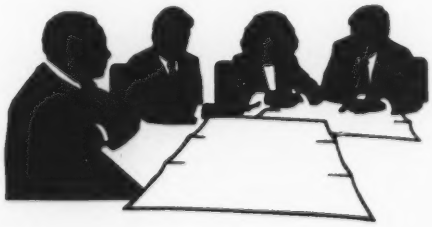
Non-Verbal Behavior—Be sensitive to non-verbal cues and what they convey; e.g., posture, facial expressions, gestures.

Verbal Behavior—Keep your language as neutral and non-judgmental as possible. Notice how others are speaking and what kinds of words they are using (value-laden versus value-free). Silence can also be a powerful way to communicate.

ADDITIONAL SUGGESTIONS

A mediator should:

- Never make assumptions:
  - — about people (whether pro or con), who comes to a mediation (e.g., how "expert" or knowledgeable an individual is);
  - — about a mediation session—how it is going to conclude (with or without an agreement) or whether it will be "difficult" or "easy."
- Beware of personal biases as they can distort perception of the facts and what is happening. Try to start with an open mind at the beginning of each mediation session.
- Maintain an atmosphere of respect, using behavior and attitude.
- Accept the values and priorities of the parties as worthy without imposing personal values unless there is a clear-cut need to do so involving a question of morality or ethics.
- Establish credibility through the behavior that is modeled.
- Remember that nobody likes surprises.
- Keep in mind that the mediator is responsible for the process, <u>not</u> the outcome and that many different outcomes can be "successful."
- Periodically test to be sure that both parties believe they are being understood.
- Encourage parties to discuss the underlying interests (why) that power their positions (what).



Appendix F—Checklist of Activities

MEDIATOR'S PRE-CONFERENCE CHECKLIST

Written Request for Conference

Initiated by (name): _____

Relationship to student: _____

On Behalf of (student's name): _____

Educational Agency: _____

Agency Representative (or Designee): _____

Date of Request: _____

Mediator's Name: _____

ACTIVITY, EVENT OR PROCEDURE	DATE COMPLETED
Receive written or telephone request for conference	_____
Receive name of Contact Person	_____
Determine accommodation needs —interpreter (Deaf or Foreign Language) —other accommodations	_____
Names, numbers of Family & Agency Representative	_____
Call Contact Person to arrange: —clerical assistance —honorarium and reimbursement —facilities available	_____
Call or visit Agency Contact: —explain role of Mediator —clarify purpose of mediation —determine convenient dates for conference —request permission to review student's educational record	_____
Contact Family (initial contact): —explain role of Mediator —clarify purpose of mediation —determine convenient dates for conference —request permission to see educational records	_____
Confirm date and time for conference (convenient for both Family and Agency)	_____
Confirm arrangements for facilities, interpreter, or other accommodation needed	_____
Develop a tentative agenda for conference —timelines for each component	_____

MEDIATOR CHECKLIST DURING CONFERENCE

DESCRIPTION OF ACTIVITY & PROCEDURES (CHECK AS COMPLETED)

Mediator to Participants in Conference:

- ❑ formally call conference to order
- ❑ identify all individuals in attendance
- ❑ explain mediation and how it fits in the appeal process
- ❑ explain reason for conference
- ❑ clarify mediator's role
- ❑ emphasize informality of conference
- ❑ review tentative agenda for the conference
- ❑ describe the agreement—what it is and what it means
- ❑ explain the due process hearing and any other dispute resolution option(s)

Mediator to Family:

- ❑ ASK: If they understand their due process hearing rights
  ❍ yes ❍ no

Mediator to School Representative:

- ❑ ASK: If they understand their due process hearing rights
  ❍ yes ❍ no

Family Caucus:

- ❑ SEPARATE family from agency personnel.
- ❑ ASK: What alternatives they will consider.
- ❑ CLARIFY: What main points the family approve of in their student's education? What main points they disagree with.
- ❑ SUMMARIZE the main points and read summary to family for accuracy

Agency Caucus:

- ❑ SEPARATE educational agency representatives from family.
- ❑ ASK: What alternatives they will consider and what main points in the student's education they agree with and disagree with.
- ❑ SUMMARIZE the main points discussed and read summary to representative for accuracy.

Remember, you should not state the alternatives as your decision, only as suggestions.

Mediator's Recess:

Take a short break to sort through information

- ❑ DECIDE: Points of agreement
  Points of disagreement
  Possible alternatives to settle the dispute

Family/Agency Interactions:

- ❑ PRESENT points of agreement
- ❑ PRESENT points of disagreement
- ❑ PRESENT suggested alternatives
- ❑ SUMMARIZE to clarify positions
- ❑ PROVIDE the following information to the family/educational agency upon request:
  - ❍ Federal and State requirements in education
  - ❍ IEP requirements
  - ❍ Timelines for a mediation and other possible alternative dispute resolution procedures
  - ❍ Explanation of the due process hearing process

Closing the Conference:

There are two possible outcomes: agreement or impasse.

If agreement is reached, then:

- ❑ WRITE an agreement and have signed by both parties
- ❑ PREPARE a report for the district superintendent/state education agency
- ❑ IF IMPASSE IS REACHED, ASK: What alternatives they will consider

If a disagreement continues:

- ❑ REMIND both parties of their right to a due process hearing as well as opportunities for another alternative dispute resolution procedure
- ❑ PREPARE a report for the district superintendent/state education agency
- ❑ DISTRIBUTE AND EXPLAIN the purpose of the mediation conference evaluation questionnaire/return envelope
- ❑ Thank the parties for their participation in the mediation process

Appendix G—Simulations for Trainers

SIMULATION CASE #1

COMPLAINANT: MOTHER OR FATHER OF AN 8-YEAR-OLD CHILD WITH DOWNS SYNDROME

Background:

1. Jimmy C., your son, has Downs Syndrome. You and your husband are in the mid-forties. You have two other children (boy is a college sophomore; girl is a high school senior).

2. Last year, Jimmy was enrolled in a full-time special education classroom. You and your husband expressed your preferences for a general education classroom inclusive program. You were not satisfied with the progress that Jimmy was making in the special education program.

3. Although the director of special education did not agree with your preference, she agreed to place Jimmy in a general education classroom.

4. The school has called you about Jimmy's excessive tiredness and episodes of falling asleep in class. Jimmy was checked by a local pediatrician who couldn't find any physical problem and said, "Maybe he's just bored."

5. Jimmy's paternal grandmother has been doing some volunteer work at the school and has been very displeased with what she has observed going on in Jimmy's class. She has told you that she feels that Jimmy appears to be tired and bored in classroom because he is not being challenged. She has observed that the classroom teacher has Jimmy isolated at the back of the general education classroom. Jimmy also doesn't seem to have many friends. She doesn't feel that Jimmy's IEP is being carried out as agreed.

6. You have talked to the director of special education and the principal at Jimmy's school. The principal has been defensive at the suggestion that his classroom teacher is a poor teacher. The principal is not very supportive of placing students with disabilities in the general education classroom.

7. It is now March, 1996 and you are worried about Jimmy's progress in school; therefore, you have requested mediation as a possible way to get more assistance for Jimmy in the general education classroom.

8. Jimmy is beginning to hate school. He says that the other children make fun of him.

Caucus:

1. Your goal is for Jimmy's IEP to be carried out within the general education classroom with support and assistance from his classroom teacher and the special education teacher.

2. You are also concerned that assistance be provided for Jimmy so that he can make new friends at school.

RESPONDENT: SPECIAL EDUCATION DIRECTOR

Background:

1. You have talked to Jimmy's general education classroom teacher who has told you that his family are unrealistic in their expectations for Jimmy. She has indicated further that she doesn't have the training to deal with a child with a disability in her classroom which is already large and requires all of her time.

2. The principal acknowledges that the general education classroom teacher could do more for Jimmy if she had some training and additional support from the special education teacher. He, however, feels that he must support his general education classroom teacher since she has been in the school system for over twenty years.

3. The principal also is concerned that Jimmy's grandmother is beginning to make trouble when she comes to volunteer, indicating that the school is not doing enough for Jimmy.

4. The principal wants to provide the best possible program for Jimmy; however, he feels that the family are being unreasonable in their requests.

5. You realize that communications between the principal, the general education classroom teacher, and the Jimmy's family have broken down. You have talked to the special education teacher who is willing to work with the general education classroom teacher in providing individualized support for Jimmy in the general education classroom although she isn't sure if the general education classroom teacher will be willing to have her come into her general education classroom to work with Jimmy.

6. You have talked to the principal about the situation and he has indicated that without additional resources, Jimmy may have to move to the full-time special education program to get special assistance.

Caucus:

1. You are willing to allocate a classroom aide to work with Jimmy within the classroom. There are two other children with special needs within this classroom who also need assistance.

2. You have located another school district that has implemented cooperative learning and are willing to support the travel and time for both the general education and special education classroom teachers to visit this program. Cooperative learning could encourage Jimmy and other students to work and play together.

3. You are also willing to look at the special education resource teacher's workload to see if she could spend an hour a day within the general education classroom co-teaching with the general education classroom teacher with an emphasis on working with Jimmy. You think that a trial period of two months could be allowed for this co-teaching arrangement as well as placement of a classroom aide.

4. Any agreement arrived at today will have to be confirmed by an official IEP meeting. You can't speak for all parties who would be involved in revising Jimmy's IEP, but you think that everyone would be agreeable for this trial period of co-teaching and placement of a classroom aide.

SIMULATION CASE #2

COMPLAINANT: MR. AND MRS. JONES ON BEHALF OF THEIR FIVE-YEAR-OLD DAUGHTER, SALLY WITH SPEECH AND LANGUAGE DELAYS

Background:

1. Sally was making normal developmental growth until age three when a reaction to a routine vaccination left her with cerebellar ataxia and severe speech and language delays.

2. You were able to enroll Sally in a Part H preschool program in the county in which they live, which is run by the Department of Health. She continued in that program for two years.

3. You met with the director of special education before Sally begin kindergarten. Together with the preschool program staff, they wrote an IEP for Sally which placed her in a general education kindergarten. She was provided an assistant to help her with motor skills. In addition, speech/language therapy was provided twice weekly for one half-hour per session.

4. Sally has adjusted well to kindergarten and has made great progress in motor skills. However, her language delay and marked articulation problems are still significant.

5. During the first semester of kindergarten, Sally had three different speech/language therapists. Every time, she got a new therapist, her language regressed. She is making progress with her most recent therapist, Mrs. Smith.

6. Mrs. Smith has been recently transferred to another school in the county because another therapist has resigned. A new therapist has been assigned to Sally's school. She has just graduated from college, and this will be her first job. You are distressed that Sally will be changing therapists again.

7. You think that the director of special education has deliberately transferred the therapist because the children in the other school have more needs and because of a personality conflict between the director and Mrs. Smith.

8. You also feel that additional speech/language therapy is needed for Sally. You felt that Sally needed five days from the beginning but didn't complain because you liked the therapist and Sally liked her too.

9. You hope that arrangements can be made to bring Sally's therapist, Mrs. Smith, back to Sally's school to give her therapy every day or to pay transportation for Sally to be taken to Mrs. Smith's new school every day for speech therapy.

Caucus:

1. As parents, you are distressed that your daughter has such marked language problems. You feel that she could make more progress with daily therapy.

2. You have heard that the new therapist is inexperienced and has not had any training with children with severe speech and language problems. Your main fear is that Sally will regress further. You feel, at a minimum, that Sally's previous therapist should work with the new therapist to plan Sally's program.

RESPONDENT: SPECIAL EDUCATION DIRECTOR

Background:

1. The school system has been involved with Mr. and Mrs. Jones for the past two years. You helped put them in touch with the Part H preschool program.

2. The school system has made a real effort to provide for Sally. A special assistant was hired to work with Sally in the general education kindergarten.

3. Sally's greatest problem is a severe language disorder and articulation difficulty. She has received language therapy twice weekly for half-hour periods.

4. Due to staff problems, Sally has had several different speech/language therapists. Another therapist has recently resigned and you feel that it was necessary to assign Mrs. Smith to another school because there are more students needing speech therapy than at Sally's school necessitating a more experienced therapist. This new school would also be closer to Mrs. Smith's home.

5. An outside evaluation that was conducted recently indicated that Sally does need daily language training from a trained speech and language therapist.

6. You are not willing to bring Mrs. Smith back to Sally's school just because of Mr. and Mrs. Jones'

preferences for their child. You feel that the parents do not have the right to demand a certain therapist.

7. There is no kindergarten at the school to which Mrs. Smith has been recently assigned so it will not be possible for Sally to be moved to this school.

Caucus:

1. You are willing to set up a daily program of speech therapy with the new speech therapist, Mrs. Williams, even though she has a heavy load.

2. A trial period of several months with Mrs. Williams can be considered. At the end of the trial period, if Sally is not making progress, the school district would re-evaluate the services being provided to Sally.

3. Even though you are not willing to bus Sally to the new school to which Mrs. Smith has been assigned, it would be possible for Mrs. Smith to assist in the planning of Sally's therapy program and to work with the new therapist.

4. An IEP meeting to modify Sally's IEP speech/language objectives can be set.

SIMULATION CASE #3

COMPLAINANT: MR. AND MRS. THOMPSON ON BEHALF OF THEIR SON, BILL, A 16-YEAR-OLD SOPHOMORE IN HIGH SCHOOL WITH EMOTIONAL AND BEHAVIORAL PROBLEMS

Background:

1. You moved to the Himshaw School District during the summer from Colorado. Mr. Thompson is in the service and has been transferred to Fort Lewis.

2. In Colorado, Bill was enrolled in a part-time resource special education program for two hours a day. In addition, he was receiving "wrap-around" social and mental health services an additional four hours per week.

3. The Himshaw School District is a small school district with part and full-time special education programs; however, coordinated educational, social, and mental health services have not been developed. The School District also has a part-time counselor to assist students with behavioral and emotional problems.

4. Both of you accompanied your son to enrollment in the fall and brought his IEP that had been developed in Colorado. You requested that the same services be provided in the Himshaw School District. Bill was provided an interim IEP while his evaluation records were requested from Colorado. He was placed in a full-time special education program with students labeled as "seriously emotionally impaired.".

5. After Bill's evaluation records arrived from Colorado and were reviewed, it was determined that no further evaluation was necessary. A second IEP meeting was held at which time, Bill expressed his preference for part or full-time placement within the general education high school classes, along with part-time special education assistance. In addition, you requested mental health services for Bill and yourselves. It was determined that Mr. Lancaster, the counselor, would provide related services three times a week to further determine the extent of mental health services needed.

6. It is now January, 1996 and, despite requests by us, Bill's special education and related services have not changed. You want the School District to comply with IDEA and provide Bill with a free, appropriate public education like that provided in Colorado.

Caucus:

1. As parents, you both are concerned about the lack of educational progress that Bill seems to be having. You are worried that Bill doesn't want to go to school and that he isn't making friends. You are further concerned about his future after graduation because Bill is already in high school.

2. Mr. Thompson has located a mental health specialist from the Children's Mental Health Clinic who has provided an independent evaluation of Bill's mental health needs. He has determined that Bill needs more in-depth therapy than the counselor can provide. He also recommends that transition services be initiated between the school personnel and other community programs such as mental health and social services.

3. You also recognize that Himshaw School District is small and has a limited amount of resources for complex services needed by students such as Bill.

RESPONDENT: SPECIAL EDUCATION DIRECTOR FOR THE HIMSHAW SCHOOL DISTRICT

Background:

1. During the past three years, the Himshaw School District has added several resource room programs at the elementary, junior high, and high school. However, the resource room at the High School serves students with learning disabilities. The teacher's training is in this area, with limited background in serving students with behavioral and emotional problems. Ms. Rickett, the teacher, has, however, been taking a graduate class in behavioral and emotional problems.

2. Mr. Roth, the teacher in the self-contained special education program at the High School, feels that Bill has made some academic progress during the fall semester, but he is concerned that Bill seems uninterested in the program.

3. The high school principal is concerned about the need for coordination with community mental health and social services and has joined a interagency task force. He has joined you in meeting with

the regional Educational Service District staff to inquire about available resources to assist in the planning of interagency services.

4. The school district is willing to develop the needed special education and related services that Bill needs; however, they will need assistance.

Caucus:

1. You realize that the Himshaw School District is not providing all of the special education and related services that Bill needs. You have begun to recruit a qualified special education teacher for the High School. Until a qualified teacher is hired, you are willing to assign a classroom assistant to the High School so that Bill can increase his participation in general education high school classes.

2. You have found out that the State Department of Education has provided some federal funds to the Educational Service District for mini-projects. The Educational Service District has indicated that they could support an interagency project for Bill if you write a mini-proposal. You are willing to do this.

3. Mr. Wilson, the High School counselor, has contacted the mental health specialist at the Community Mental Health Clinic to determine what kind of mental health service the High School can obtain for Bill.

4. Finally, Mr. Roth, the teacher of the self-contained special education program is willing to work with the other high school teachers and a new classroom assistant to support increased participation by Bill in two additional general education high school classes.

Mediation in Special Education: A Resource Manual for Mediators
1996 (Revised Edition)

Revised and Updated by Judy A. Schrag, Ed.D., for Project FORUM
National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314
(703) 519-3800

This resource manual was supported in whole or in part by the U.S. Department of Education, Office of Special Education Programs (Contract No. HS92015001). However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Education, and no official endorsement by the Department should be inferred.